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#13 PATENT 2633
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re patent application of: KAKIZAKI, et al.

Serial No.: 09/650,506

Group No.: 2633

Filed: August 29, 2000

Examiner: LI, Shi K.

For: OPTICAL ONE-TO-ONE PROTECTION SWITCHING APPARATUS

I, Iris C. Rousey, certify that this correspondence is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

On August 3, 2004

Iris C. Rousey

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
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APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)

An Application for Patent Term Adjustment (PTA) is made herein under 37 CFR § 1.705(b). Accompanying the Request is the required fee of \$200.00 set forth in 37 CFR § 1.18(e). The required fee is enclosed herewith. However, the Director is authorized to charge any additional fees required or credit any overpayment to Deposit Account No. 50-0462.

The Applicant respectfully submits that additional 515 days should be added to the Patent Term based upon 37 CFR § 1.702(b), which requires issue of a patent within three years of the filing date. The Applicant has already received 728 days of Patent Term Adjustment under 37 CFR § 1.702(a)(1) for the Office's failure to issue a notification 14 months after filing. However, the Applicant has also received a reduction of 94 days to the Patent Term pursuant to 37 CFR § 1.704(b) for not responding to an Office Action within 3 months. Because of the currently requested additional 515 days, the correct Patent Term Adjustment should be 1149 days.

The Applicant is entitled to the originally calculated 634 days based upon the following information: The Applicant is entitled to receive an adjustment of 728 days under 37 CFR § 1.702(a)(1). The Applicant's filing date was August 29, 2000, and 14 months from that date was October 29, 2001. Therefore, the Applicant is entitled to an adjustment equal to the time from October 29, 2001 until the first notification issued from the Patent and Trademark Office. The first notification did not occur until October 27, 2003. This is 728 days from October 29, 2001. However, the Applicant also receives a reduction of 94 days to the Patent Term pursuant to 37 CFR § 1.704(b) for not responding to an Office Action within 3 months. The response to the non-final Office Action was mailed on October 27, 2003. Three months from the mail date is January 27, 2004. The Patent and Trademark Office received a response on April 30, 2004, which is 94 days from the three-month mark. Therefore, the adjustment of plus 728 days minus the reduction of 94 days results in the originally calculated Patent Term Adjustment of 634 days.

Applicant has determined that the Patent Term should be adjusted based upon the following information: According to the Determination of Patent Term Adjustment mailed July 14, 2004 the "Patent Term Adjustment to date is 634 day(s)." The Determination also states, "[i]f the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and half months) after the mailing date of this notice, the Patent Term Adjustment will be 634 day(s)." 28 weeks from July 14, 2004 is Friday, January 28, 2005. It is believed that the Patent will then issue on Tuesday, January 25, 2005 since it is the Tuesday before the date that is 28 weeks after the mailing date. The Application's filing date is August 29, 2000 and the 3-year date was August 29, 2003. January 25, 2005 is 515 days from August 29, 2003. It is believed that Applicant, under 37 CFR § 1.702(b), is entitled to 515 days in addition to the originally calculated 634 days.

August 3, 2004

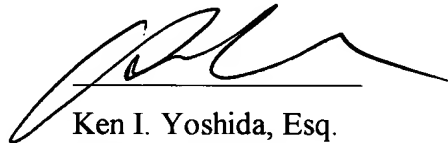
Therefore, a total correct Patent Term Adjustment is 1149 days because Applicant is entitled to plus 1243 days (728 days + 515 days) and minus 94 days. The Applicant understands that this is contingent upon an issue date of January 25, 2005 and that the Patent Term may be further adjusted either upwards or downwards depending upon the actual date that the Patent issues.

This Patent will not be subject to a terminal disclaimer.

Conclusion

In view of the above statements, the Applicant respectfully submits that the additional time of 515 days should be granted for a corrected total Patent Term Adjustment of 1149 days.

Respectfully submitted,



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Date: August 3, 2004

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